

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 46 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

MEPABHAI MANDAN CONTRACTORS & ENGINEERS

Versus

CHAIRMAN/SECRETARY

Appearance:

MR BJ SHELAT, Sr. Counsel for MR BD KARIA
for Appellant.

Respondent No. 1 absent, though served.

MR MR BHATT for Respondent No. 2

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 12/09/2000

ORAL JUDGEMENT

Original plaintiff of Special Civil Suit No.21 of
1989 (now renumbered as Special Civil Suit No.56 of 1995)
which was pending on the file of Civil Judge (S.D.),

Gandhidham -Kuchchh (who will be referred to as the learned Judge of the trial Court) has by preferring this appeal under Sec.104(1) of the C.P.Code, 1908 read with Order 43 R. 1(a) of C.P.Code 1908 challenged the legality of order dt. 20th September, 1995, passed below plaint Ex.1 of the aforesaid suit.

2. Here in this appeal, the appellant is a original plaintiff, whereas the respondents are the original defendants in that suit.

3. Facts leading to this present Appeal From Order, in a nutshell are as follows:-

The plaintiff -Partnership firm is a Contractor and Engineers having its office at Gandhidham -Kuchchh. On or about 17th March, 1986, the plaintiff and defendants entered into one contract for work stated in the said contract which is at Mark 12/2 in that suit. As per the case of the plaintiff, contract work is already completed.

3.2 On or about 2nd February, 1989, plaintiff filed aforesaid suit to obtain money-decree to recover for Rs.1,73,76,934/- on different heads as stated in plaint Para 5. Formerly the said suit was filed in the Court of the learned Civil Judge (S.D.) at Bhuj. Thereafter, on establishment of the Court, it was re-transferred to the Court of learned Civil Judge (S.D.), Gandhidham - Kuchchh and it was registered with new Number as Special Civil Suit No.56 of 1995. The defendants appeared and resisted the suit by filing their written statement Ex.11. They also produced documents with list Ex.12 and after filing the written statement, the defendants submitted an application Ex.17 with a request to frame Preliminary Issues with regard to jurisdiction of court. Accordingly the following issues at Ex.19 were framed :

(1) Whether defendants prove that this Court has no territorial jurisdiction to hear and decide the suit ?

(2) What order ?

4. Though that suit was adjourned from time to time for hearing that issues, it appears from order which is challenged in this appeal, that on 20th September, 1995, learned advocates for both the parties of the suit remained absent. The learned Judge of the trial Court, after considering the documents on record, decided that Preliminary Issue No.1 in absence of learned advocates for both the parties and reached to a conclusion that the

Civil Court (S.D.), Gandhidham has no jurisdiction to try the suit, and therefore, the learned Judge of the trial Court was pleased to pass an order dated 20/09/1995 under O. 7 R. 10 of the C.P.Code, 1908 below Ex.1 and order to return the plaint to plaintiff for presentation to proper Court. As against that order for returning of plaint to plaintiff, this present appeal is filed by the original plaintiff.

5. Shri B.J.Shelat, learned Senior Counsel for and on behalf of Shri B.D.Karia, learned advocate for the appellant has argued that on the day on which the learned Judge of the trial Court passed an order below Ex.19, the learned advocates of both the parties were admittedly absent and in their absence, he decided Exh.19 exparte, without taking into consideration the agreement produced with list Exh.12.

6. I have perused the Rojkam of the suit and it appears that there was no fault on the part of the plaintiff to remain absent on that particular day i.e. on 20/09/1995.

7. Shri M.R.Bhatt, learned Advocate for the respondents has, by opposing this appeal, argued that order which is challenged in this appeal is passed on merits of the case, and order challenged in this appeal does not require to be disturbed.

8. Looking to the aforesaid facts neither party was given an opportunity of being heard, before passing the order below application Ex.19. It would be in the interest of justice and in the fitness of things to remand Exh.19 back to the trial court, with suitable directions.

9. In view of the discussion made hereinabove, this appeal is allowed and the order dt. 20th September, 1995 passed below Ex.19 as well as order of even date passed below plaint Ex.1, in Special Civil Suit No.21 of 1989 (New No.56/95) are hereby set aside. This court remands the said application Ex.19 to the learned Judge of the trial Court with a direction to hear and decide the same afresh after affording full opportunity of being heard to both the parties, in accordance with law as early as possible, preferably within three months from the date of this order, without being influenced by the order of this Court. There shall be no order as to costs.

Office is directed to send back Record and Proceedings of Special Civil Suit No.21 of 1989 (Now No.

56/95) to the trial court from which it has been called for, without any delay along with Writ of this court, forth with.

Date: 12/9/2000. (H.H.MEHTA,J.)

ccshah